

*State of
Michigan*

Citizens' Foster Care Review Board Program

2000
ANNUAL
REPORT



*Body of
Miracle Jackson*

Photo by permission of Gabriel B. Tate/Detroit Free Press

To the Readers of Our Annual Report:

The Citizens' Foster Care Review Board Program is comprised of local residents who meet once a month to review cases of abused/neglected children in foster care. The Program Advisory Committee is a collaborative body of representatives from each local board along with individuals from the child welfare community. The data presented in this Annual Report, along with the recommendations contained herein, are the product of this collaborative effort and do not necessarily represent the opinions of the Michigan Supreme Court, or the State Court Administrative Office, under whose auspices this Program is conducted.

Sadly, the abuse and neglect of children are typically not front page news, especially in large metropolitan areas. However, during the past year two tragic instances of fatal child abuse were reported on the front page of the Detroit Free Press. The picture of a man holding a garbage bag containing the lifeless body of an infant named Miracle Jackson will haunt many forever, as will a subsequent investigative report chronicling the horrible abuse and death of two-year-old Ariana Swinson. Both instances involved cases where the institutions mandated to protect children failed. Problems related to high caseloads, inexperienced and overwhelmed caseworkers, inadequate attorney representation of children, and gaps in system and worker accountability were highlighted.

Some might say it is unfair and unwise to indict the whole system on the basis of a few extreme cases. However, inherent in both cases were shortcomings of the child welfare system that the Foster Care Review Board Program (FCRBP) has consistently observed in its independent monthly reviews of abuse and neglect cases. After each such review an advisory report of "Findings and Recommendations" is submitted to the family division of circuit court, Family Independence Agency, Private Agency, and other involved parties. Once each year, through this Annual Report, recommendations for systemic changes are directed to the Governor, Legislature, and other members of the child welfare system.

In fairness to the "system," it did respond to both of the cases noted above with improvements. The Jackson case highlighted a gap in the state's child protection system regarding the monitoring of children born to parents who previously lost parental rights to other children. Reports from the Family Independence Agency and the Department of Community Health indicate that this gap now has been addressed. The Swinson case highlighted systemic weaknesses and limitations; it elicited an almost immediate response from the Legislature. A House Subcommittee was formed to evaluate the Family Independence Agency and its Child Protective Services Division and results are pending.

Clearly, there is an ongoing need for citizens and elected officials, as well as the news media, to take an active role in supporting and ensuring that the institutions entrusted with protecting vulnerable children do so. Institutions must be held to the highest standards necessary to protect all children and be endowed with adequate resources to do the job. Standards must be independently monitored and enforced with reasonable sanctions.

The 2000 Annual Report again raises systemic issues of grave concern to the citizen volunteers who have devoted countless hours reading case materials and conducting interviews with all parties involved in the cases selected for review. The Report also focuses on the serious issue of inadequate legal representation for children in care. We urge you to read this document thoughtfully. It is in our power to protect children so that avoidable tragedies do not occur. Please join with us in serving notice that the conditions which exist in our child welfare system are not acceptable; we expect and demand that these issues be addressed NOW!



Randall J. Wilger, Chair

FCRBP Advisory Committee

Overview

The Michigan Citizens' Foster Care Review Board Program was established by the Legislature to monitor neglect wards in foster care. Thirty local review boards, consisting of citizens from the community, meet one day each month to review children in care. Boards also hold appeal hearings when foster parents object to the removal of wards from their home. In addition to reviewing wards each month and holding hearings, boards confer with judges, agency directors, and other child welfare advocates in the community.

With the passage of 1997 PA 170, boards are required to review permanent wards that fall into the following categories: (i) wards who are registered with the Michigan Adoption Resource Exchange (MARE) and who have been on hold status for not less than 12 months; (ii) wards who have not been registered with MARE, have been permanent wards for not less than 6 months, and do not have a documented permanency plan in place; and (iii) wards who are less than 12 years of age and have been listed in the MARE photo listing book for more than 6 months and for whom no family has been identified. In the 2000 Annual Report, for the first time, data is separated into categories of temporary wards and permanent wards to reflect permanent ward reviews.

Boards observe the child welfare system from their unique vantage point and report back to the Legislature and Governor with recommendations in this report. The Annual Report contains a summary of board activities and identifies problems that impede permanent placement of children. Additionally, the report recommends improvements to timely placement of children in permanent settings.

Due to funding uncertainty, staff transitions, and the impact of foster parent appeals, there was a reduction in the number of reviews conducted during 2000.

Foster Parent Appeals

Under 1997 PA 163 foster parents may appeal to a local review board the movement of a ward from their home under certain circumstances if they object to the move. Boards convene, hold a hearing, and make recommendations. If the board supports the agency's movement of the ward, the appeal process ends. If the board supports the foster parent's appeal, the ward must remain in the current foster home pending a court hearing. In 2000, Public Act 163 was amended by PA 46 which allows foster parents to appeal moves of MCI permanent wards from their homes. (MCI wards are children whose parental rights have been terminated and who are permanent wards of the state until adoption or some other permanency goal occurs.) The primary difference in holding appeals for MCI wards is that if the board supports the foster parent's appeal, the MCI Superintendent must review the case in 7 to 14 days and make a decision regarding the child's placement. For non-MCI wards, the court must hold a hearing in 7 to 14 days after a board's agreement with foster parents.

In 2000, there were 75 foster parent appeals resulting in 52 actual hearings. Boards supported the agency's move in 33 cases, while supporting the foster parents in 19 cases. In the 19 cases where boards supported the foster parents, there were 16 follow up reviews by either the circuit court (for temporary wards) or the MCI Superintendent (for MCI wards). The court or MCI Superintendent supported the board's decision seven times, while finding for the agency nine times. Three cases resulted in no hearing, usually because the agency and foster parents came to an agreement, or the agency decided not to move the ward following a thorough assessment after the board hearing.

Twenty-three appeals never resulted in a hearing by a board, generally because foster parents withdrew their request, courts ordered the removal of the ward, or the agency decided not to remove the ward.

It appears that foster parents sometimes wait too long to indicate to the caseworker there is a problem. Conversely, agencies sometimes wait too long to address a problem. By the time the two sides meet, it is often too late to salvage the placement. However, it also appears that better decision making is occurring regarding the movement of wards. Case conferences are occurring more frequently which appear to prevent unnecessary moves and eliminate unnecessary appeals.

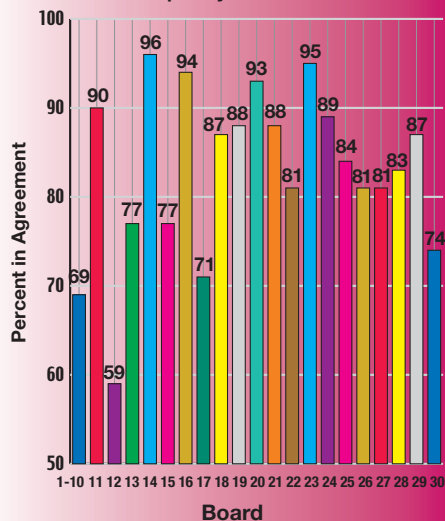
Statewide FY 1999/2000

Total Reviews	2,632
Total Wards in Care	28,356

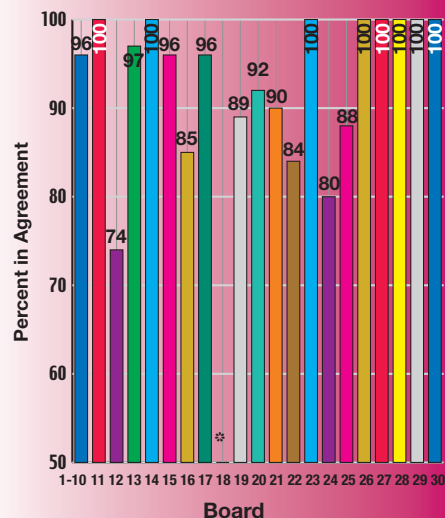
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WAYNE COUNTY FOCUS

Concurrence with Permanency Plan Temporary Wards



Concurrence with Permanency Plan Permanent Wards



* Board 18 did not review any permanent wards.

1-10 Wayne; 11 Oakland; 12 Macomb; 13 Genesee; 14 Huron, Lapeer, Sanilac, St. Clair; 15 Livingston, Monroe, Washtenaw; 16 Ingham; 17 Hillsdale, Jackson, Lenawee; 18 Barry, Clinton, Eaton, Gratiot, Ionia, Montcalm, Shiawassee; 19 Saginaw, Tuscola; 20 Branch, Calhoun, St. Joseph; 21 Kent; 22 Kalamazoo; 23 Muskegon; 24 Allegan, Ottawa, VanBuren; 25 Berrien, Cass; 26 Bay, Clare, Gladwin, Isabella, Midland; 27 Benzie, Lake, Manistee, Mason, Mecosta, Newaygo, Oceana, Osceola; 28 Antrim, Arenac, Crawford, Grand Traverse, Iosco, Kalkaska, Leelanau, Missaukee, Ogemaw, Oscoda, Otsego, Roscommon, Wexford; 29 Alcona, Alpena, Charlevoix, Cheboygan, Chippewa, Emmet, Luce, Mackinac, Montmorency, Presque Isle; 30 Alger, Baraga, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, Ontonagon, Schoolcraft

Following the comprehensive plan of 1999 to advocate for improved attorney representation of children in Wayne County, local boards began to see the results of their efforts in 2000. Although still relatively small in number, attorneys who did participate in reviews and appeals provided the Board with quality information and a perspective which enriched and enhanced the value of findings and recommendations to the court and other interested parties. Boards were pleasantly surprised by the caring and competence displayed by the majority of attorneys who participated. Attorneys proved that in spite of the alleged systemic barriers to competent representation of children, caring, committed, individuals find ways to overcome barriers and provide quality representation to their child clients.

Boards continued to meet with jurists and court officials of the Family Division of the Third Circuit Court to seek a more collaborative role with the judiciary. Boards continue to be gratified by the support and respect afforded by the court that is best demonstrated by its conscientious and timely response to concerns raised by boards. Volunteers appreciate the Third Circuit Court Family Division Administrator's continued efforts to promote and ensure adequate attorney representation of children in Wayne County.

Through dialogue with jurists this past year, board members found an increased appreciation for the court's daunting task of making decisions which significantly affect children and families for a lifetime. Boards did, and will continue to, convey to the court the availability of the FCRBP to support the judiciary in fulfilling its responsibilities to children and families in the County.

Attorney Representation Survey

Statement of Concern and Outcome

For many years local foster care review boards have recognized inadequate representation of children in child protective proceedings as a statewide problem. In July 1996 the Report of the Binsfeld Children's Commission expressed similar concerns stating that "the present system fails to provide children with adequate representation in court." The Commission recommended several reforms to address this issue. In response, 1998 PA 480 was enacted and contains one of the most comprehensive statutes in the nation governing the manner in which children should be represented in a child protective proceeding. However, full implementation of this statute has been problematic. Recognizing the seriousness of this problem, the Foster Care Review Board Program established "improving attorney representation for children" as one of its Biennial Goals for 1998-99.

The issue of Lawyer-Guardian Ad Litem (L-GAL) representation of wards manifests itself in many ways. This includes the observed failure of L-GALs to advocate for (or meet with) their clients, or if a very young child, failure to talk with those who care for or work with the child.

The Program's statewide Advisory Committee sought to determine if compensation is at the heart of the problem. A questionnaire was developed to explore this issue, and local courts with jurisdiction over neglect wards throughout the State were surveyed from May 1999 to July 2000.

The data collected by the survey represented 94% of children in care at the time. The information provides a strong basis upon which to extrapolate the scope of the problem and to make recommendations for systemic changes.

Michigan Statutes Affecting the Appointment of L-GALs in Child Protective Proceedings

Michigan Law requires the court to appoint a L-GAL to represent the child in child protective proceedings. Once appointed the L-GAL must serve until discharged by the

court. In addition to ordinary duties of competence and diligence prescribed by Michigan, a L-GAL has the power and duty to:

- determine the facts of the case by conducting an independent investigation;
- meet with and observe the child before each proceeding or hearing;
- review agency case files, consult with the child’s parents, foster care providers, guardians, and caseworkers.

Diligence

The Michigan Rules of Professional Conduct (MRPC) require a lawyer who represents any party to act with reasonable diligence and promptness in representing a client. Additionally, the MRPC require a lawyer’s workload to be controlled so that each matter can be handled adequately.

The survey asked trial courts how many attorneys it employed to represent parties in child protective proceedings. The total number of children in care indicates that the statewide ratio of court-appointed counsel to children varies widely. The survey also revealed that, in most counties, counsel appointed to represent children are drawn from the same pool of attorneys who represent indigent parents. Consequently, in addition to representing children, an attorney may represent several indigent parents as well as handle a private practice. While there is no empirical data prescribing a recommended case load for a court-appointed L-GAL, the L-GAL’s duty to act with reasonable diligence and promptness in representing a client is both self-evident and required by the MRPC.

Competence

Although a lawyer appearing in a child protective case is required to be attentive and adequately prepared given the circumstances of a particular case, there are no required state or national standards for court-appointed representation of children or parents suspected of child abuse or neglect.

Michigan’s Rules of Professional Conduct require a lawyer appearing on behalf of a client to maintain the vital knowledge and skill necessary for a specialized area of practice by engaging in continuing study and education. However, the survey reveals that only 17% of the responding counties have any requirements that must be met prior to appointment and only 15% have continuing eligibility requirements.

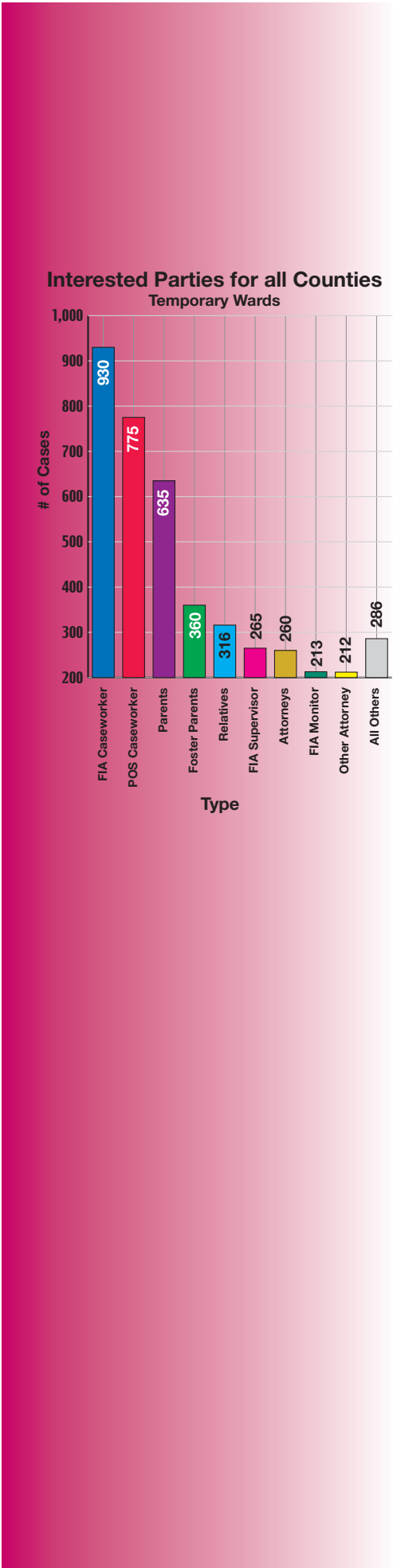
This data calls into question whether appointed attorneys have the critical knowledge and skill necessary to safeguard the rights of children and indigent parents. Thus, standards for court-appointed counsel are central to improving practices and guaranteeing adequate representation.

Compensation

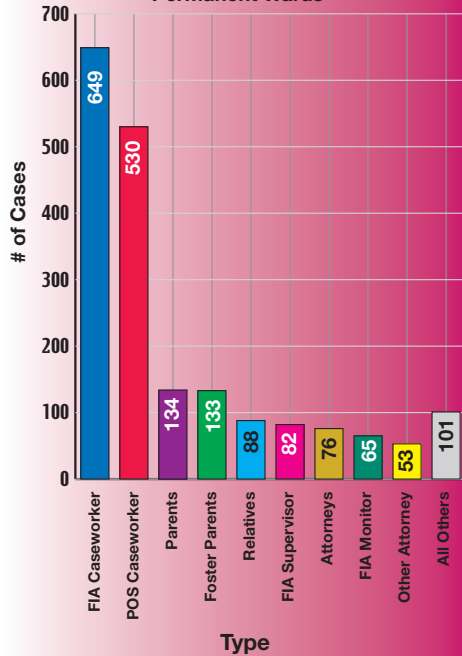
The Michigan Rules of Court require trial courts to compensate attorneys appointed to represent the child as determined by the court. The Rules also mandate that compensation include all necessary and appropriate out-of-court consultations as required by statute or court rule. However, some of the responding trial courts expressed concern about the resources allocated to implement statutory provisions having to do with court appointed legal representation.

The data collected indicates that 77% of the responding counties reported funding for court-appointed attorneys as adequate, and 76% said that they are able to attract adequate numbers of attorneys. However, only 33% of these same respondents reimburse attorneys for conducting out-of-court activities. Conversely, nearly a quarter of the counties that do not reimburse attorneys for out-of-court activities cited inadequate funding as the reason. Moreover, because better than 85% of the responding counties are reliant on their county commissioners to increase the total dollar amount available for attorney reimbursement, it is unclear whether the counties that said funding is adequate responded that way because their local funding units pay the bills. Nevertheless, most of these same courts do not reimburse attorneys for duties performed outside of the courtroom.

In counties using an “hourly rate” to pay attorneys, a little over half of the respondents said that they had adequate funding. On the other hand, well more than three quarters of counties paying a “flat fee” said that funding was adequate. This disparity suggests that



**Interested Parties for all Counties
Permanent Wards**



while trial courts using the flat fee method appear on the surface to be better off, the majority of the responding trial courts report that they do not compensate attorneys for out-of-court activities.

More than 20% of the responding trial courts reported that funding for child protective proceedings comes out of the same fund used to compensate attorneys appointed in other proceedings. Blending resources for protective proceedings with those of other proceedings carries the potential to deplete available funding and endanger a court's ability to ensure that the rights of children and indigent parents are safeguarded.

Anecdotal information gleaned from citizen reviewers statewide indicates that many foster parents, natural parents, and children inform them that they do not see their court-appointed attorneys prior to court proceedings. However, we do note that citizen reviewers also report some attorneys who perform out-of-court activities for which they are not reimbursed.

Conclusions

Children in care deserve effective legal representation; they need L-GALs who are well trained and specialized and who will advocate to promote the child(ren)'s best interests. Therefore, the Program recommends that the State Court Administrator and the State Bar of Michigan work together to insure that the representation of children in protective proceedings is accomplished as required in statute and consistent standards are enforced. This includes developing a uniform per-child funding formula to provide the necessary resources to assure adequate representation of children in court.

Alternatively, the State may wish to revisit Recommendations 81 - 83 of the Report of the Binsfeld Children's Commission (1996). These recommendations urge the creation of multi-disciplinary Child Advocacy Offices statewide. The report also suggests that such an entity be created as a 501 (c) (3) nonprofit corporation capable of receiving both public and private funding.

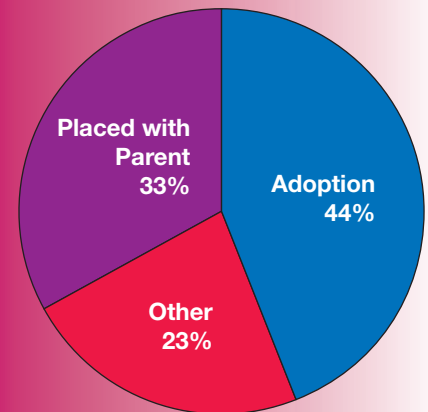
2000 Program Recommendations

(bold denotes main topic of recommendation)

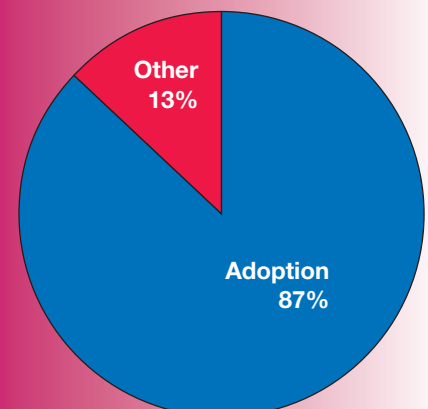
1. We recommend that FIA work with **substance abuse treatment** providers to develop programs specifically designed to meet the needs of parents with children in care. Furthermore, when substance abuse is identified as a problem, it should be addressed in the treatment plan before requiring any other remedial services.
2. We recommend that **mental health professionals** be involved during the development of the Initial Service Plan in order to identify parents' intellectual or emotional limitations and to ensure that these issues are addressed in the plan. We recommend further that children receive a **psychological and/or psychiatric evaluation** so their emotional and/or mental health needs can be addressed immediately and their care giver can be included in the therapeutic process.
3. We recommend that agencies actively engage parents in the development of the **Parent Agency Agreement and Service Plan** to increase the likelihood of parental compliance.
4. We recommend that FIA/POS caseworkers utilize FIA policy and resources to identify and locate **absent/putative parent(s)** within the first ninety days of placement to assist in the permanency planning process and to prevent permanency delay for children. We recommend further that caseworkers document these efforts in every Initial and Updated Service Plan.
5. We recommend that metro Detroit FIA offices establish partnerships with local **housing** coalitions and Section 8 housing programs, develop and maintain an up-to-date listing of available housing, and require caseworkers to provide more assistance to clients when housing is the only barrier preventing the return of children.

6. We recommend that the Legislature enact a statute to place families with children in care at the top of waiting lists for publicly subsidized **housing**.
7. We recommend that FIA and the courts take into account **parents' past history** with service provision and determine if there is any likelihood that additional services will be of benefit or if the case should be fast-tracked for termination.
8. We recommend that FIA/POS agencies develop comprehensive recruitment and retention plans to combat **caseworker turnover** and uncovered cases. Such a program should clearly define expectations regarding caseworker roles and responsibilities, provide coaching for workers and supervisors, promote ongoing training and worker recognition, and use para-professionals to assist with job tasks.
9. We recommend that the Legislature and the Governor's Office **limit the caseloads** of foster care caseworkers to a ratio of 15 to 1 and provide funding to do so.
10. We recommend that FIA/POS agencies provide easily accessible **legal consultation for foster care supervisors and caseworkers**, and that FIA/POS agencies be represented by an attorney, who is responsible for preparing all legal documents, at all neglect/abuse proceedings to eliminate unnecessary delay in court proceedings.
11. We recommend that the FIA encourage and support private child placing agencies to create effective and **comprehensive treatment foster homes**, since traditional foster homes do not meet the needs of the disturbed child because of rapid turnover in foster homes due to the large number of special needs children in care.
12. We recommend that FIA/POS agencies provide relative or **kin care givers** the same **supportive services** and information involving the child as licensed care providers, since kin care givers are often not aware of their roles, rights as care givers, or resources in the community. This should include mental health records as allowed by law.
13. We recommend that FIA/POS agencies diligently adhere to **FIA adoption policy** and develop a method of accountability for meeting standards because of the lack of progress towards adoption. Furthermore, agency directors should establish internal review procedures, involving upper level administrators, for all children where adoption is delayed, a child is placed on hold status with MARE, or adoption is deemed not possible.
14. We recommend that FIA develop a **formal Independent Living skills program** that is shared with foster parents and kin care providers to eliminate the need for foster parents and kin care providers having to be responsible for informally providing these skills.
15. We recommend that agencies use a collaborative dispute resolution process, such as mediation offered through the **Permanency Planning Mediation Program** of the Community Dispute Resolution Program (if available), to reduce the number of contested petitions, increase compliance with parent service plans, resolve disputes when families compete to adopt the same child(ren), and address other disputes that hinder the timely achievement of a permanency plan.
16. We recommend that the Legislature provide **adequate resources** for courts to meet the requirements of 1998 PA 480 in representing children. We recommend further that courts ensure the **Lawyer-GAL** is taking an active role in the case. (See Attorney Representation Survey.)
17. We recommend that the Michigan State Bar Association and trial courts urge parents' court-appointed attorneys to thoroughly review the Parent Agency Agreement with their clients prior to the first dispositional hearing. We recommend further that FIA/POS agencies train their caseworkers to **work collaboratively with the children's and parents' attorneys** to ensure that parents have the necessary understanding of the gravity of the proceedings and are as clear as possible on their responsibilities for getting their children returned.

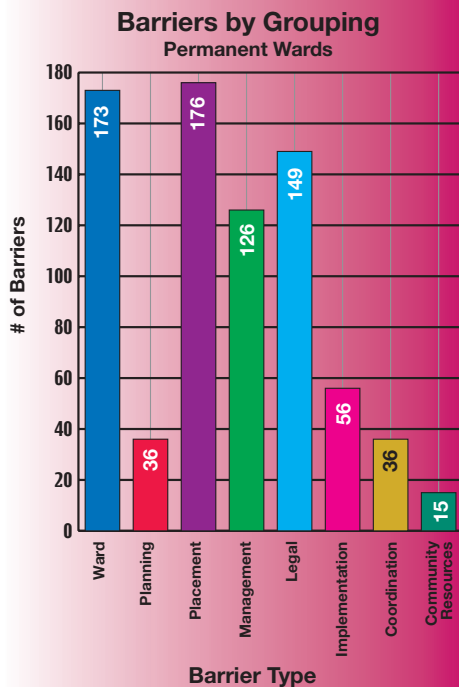
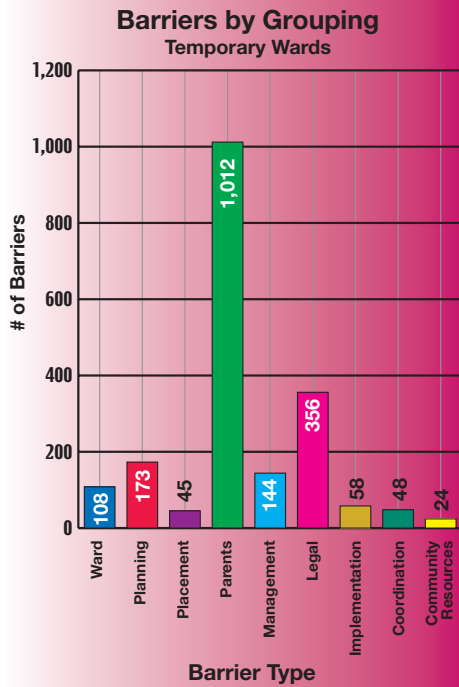
**Resolution of Cases Under
Foster Care Review
Temporary Wards**



**Resolution of Cases Under
Foster Care Review
Permanent Wards**



Top Barriers to Permanency in 2000



Temporary Wards

- Parental Substance Abuse
- Parental Lack of Insight into Problems
- Parental Non-Compliance with Parent/Agency Agreement
- Ward's Own Behavior
- Parental Lack of Judgment (Vulnerability to Inappropriate Influence of Others/Peers)
- Inadequate/Inappropriate Housing
- Parental Low Functioning (Limited Abilities, Lack of Coping Skills)
- Plan Inappropriate (Does Not Appear Feasible Based on Documentation)
- Parents' Rights Override Children's Rights
- Lawyer/Guardian ad Litem Not Taking Active Role in Case
- Caseworker Change Delays Progress
- Frequent Delays in Court Hearings

Permanent Wards

- Ward's Own Behavior
- Lack of Appropriate Adoptive Homes
- Appeal of Termination Pending
- Caseworker Change Delays Progress
- Lack of Progress (Established Plan Not Being Addressed in a Timely or Substantive Manner)
- Other - Legal Barriers
- Inadequate Knowledge of the Case by the Case Manager
- Lawyer/Guardian ad Litem Not Taking Active Role in Case
- Inadequate Supervision of Caseworker
- Uncovered Case (Case Temporarily without Permanently Assigned Caseworker)
- Other - Placement Barriers
- Inadequate Coordination Between FIA and POS

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